



China Bente Industry (K) Limited v Landex Group Limited & another (Civil Appeal (Application) E629 of 2023) [2024] KECA 1602 (KLR) (8 November 2024) (Ruling)

Neutral citation: [2024] KECA 1602 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E629 OF 2023
M NGUGI, JA
NOVEMBER 8, 2024**

BETWEEN

CHINA BENTE INDUSTRY (K) LIMITED APPLICANT

AND

LANDEX GROUP LIMITED 1ST RESPONDENT

SELINE J. KOMEN 2ND RESPONDENT

(Being an appeal from the ruling and order of the Environment and Land Court delivered at Nairobi by Hon. Justice Oguttu Mboya on 21st Day of November, 2022 in Nairobi ELC No. 358 of 2019)

RULING

1. In the application dated 30th May 2024, the law firm of Abdulrahman, Saad & Associates Advocates asks this Court to grant it leave to cease acting for the appellant, China Bente Industry (K) Limited. The application is brought under rule 23(2) of the Court of Appeal Rules, section. 1A, 1B and 3A of the [Civil Procedure Act](#) and other enabling provisions of the law
2. The application is based on the grounds set out on its face and is supported by an affidavit sworn by Saad M. Saad on 30th May, 2024. The applicant avers that it is unable to proceed with the matter on behalf of the appellant due to lack of proper instructions, and it can no longer continue with the conduct of the matter without further instructions. Mr. Saad avers that the firm has made several attempts to obtain proper instructions from the client without any success; that the appellant is unwilling or has neglected the request by its advocate on record to provide proper instructions; and the firm cannot therefore continue with the conduct of the matter.
3. The applicant has filed submissions dated 27th June 2024 in which it submits that this Court has inherent power, as enunciated in *Equity Bank Limited v West Link Mbo Limited* (2013) eKLR and *Board of Governors, Moi High School, Kabarak & Another vs Malcom Bell* (2013) eKLR, to grant



orders sought under rule 23(2) of this Court's Rules. The applicant further invokes the overriding objectives principle in section 3A and 3B of the *Appellate Jurisdiction Act*. It submits that it has made several attempts to reach its client without success, and it therefore wishes to withdraw from acting for it.

4. The applicant cites the case of Njuguna Kahari and Kiai Advocates vs Nairobi City Council (2020) eKLR and submits that it has met the threshold set by expressing its desire to cease acting for the appellant through filing of the present application and causing it to be served upon the appellant's representatives.
5. There is no response to the application.
6. Rule 23 (2) of this Court's Rules states that:
 - (2) An advocate who desires to cease acting for a party in a civil appeal or application, may apply by notice of motion before a single Judge for leave to so cease acting, and such advocate shall be deemed to have ceased to act for such party upon service on the party of a certified copy of the order of the judge.
7. This Court has jurisdiction, under the above rule, to grant the advocates leave to cease acting for a party. Before granting such orders, however, the court must be satisfied that the applicant has served the party for whom it seeks to cease acting. In his affidavit, Mr. Saad has not deposed that his firm served the appellant. In its submissions, however, the applicant states that it served the application on the appellant's-unnamed- representative. This is not evidence of service.
8. Such evidence of service as is on record belies the submissions by the applicant. The record contains an affidavit of service sworn by Adan Osman Mohamed Advocate on 28th June 2024.

Mr. Mohamed avers that he served the application and submissions on the firms representing the 1st and 2nd respondents, Kipkenda & Co. Advocates and Masila & Mworio LLP respectively through their official emails. There is no indication that the appellant or its representative was served with the application.
9. In the circumstances, it would not serve the interests of justice to allow the applicant to cease acting for the appellant without notice to it of its advocate's intention to cease acting for it.
10. I accordingly find the application dated 30th May 2024 to be without merit and decline to grant the orders sought therein. The application is hereby dismissed, but with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024

MUMBI NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

